

106TH CONGRESS  
1ST SESSION

# S. 1612

To direct the Secretary of the Interior to convey certain irrigation project property to certain irrigation and reclamation districts in the State of Nebraska.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 22, 1999

Mr. KERREY (for himself and Mr. HAGEL) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To direct the Secretary of the Interior to convey certain irrigation project property to certain irrigation and reclamation districts in the State of Nebraska.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4               This Act may be cited as the “Missouri River Basin,  
5       Middle Loup Division Facilities Conveyance Act”.

6       **SEC. 2. DEFINITIONS.**

7               In this Act:

8                       (1)   COMMISSIONER.—The term “Commis-  
9       sioner” means the Commissioner of Reclamation.

1 (2) DISTRICT.—The term “District” means—

2 (A) the Farwell Irrigation District, a polit-  
3 ical subdivision of the State of Nebraska;

4 (B) the Sargent Irrigation District, a polit-  
5 ical subdivision of the State of Nebraska; and

6 (C) the Loup Basin Reclamation District,  
7 a political subdivision of the State of Nebraska.

8 (3) DISTRICT TRUST.—The term “District  
9 Trust” means the Nebraska-Middle Loup River  
10 Community Environmental Trust established under  
11 section 5(a)(2)(B)(v).

12 (4) GAME AND PARKS COMMISSION TRUST.—  
13 The term “Game and Parks Commission Trust”  
14 means the Nebraska-Middle Loup River Game and  
15 Parks Commission Trust established under section  
16 5(a)(2)(B)(vi).

17 (5) PROJECT.—The term “Project” means  
18 Sherman Reservoir, Milburn Diversion Dam, Arca-  
19 dia Diversion Dam, related canals and other related  
20 lands, water rights, acquired land, distribution and  
21 diversion facilities, contracts, personal property, and  
22 other associated interests owned by the United  
23 States and authorized under the Act of June 17,  
24 1902 (32 Stat. 388, chapter 1093), the Act of De-  
25 cember 22, 1944 (commonly known as the “Flood

Control Act of 1944”) (58 Stat. 887, chapter 665),  
and the Act of August 3, 1956 (70 Stat. 975, chapter 917).

(6) REPAYMENT AND WATER SERVICE CONTRACTS.—The term “Repayment and Water Service Contracts” means all repayment and water service contracts between the Commissioner and the District relating to the Project.

(7) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(8) TRUST.—The term “Trust” means—

(A) the District Trust; and

(B) the Game and Parks Commission Trust.

### **SEC. 3. CONVEYANCE OF THE PROJECT.**

(a) CONVEYANCE.—

(1) IN GENERAL.—The Secretary shall convey to the Districts, by quitclaim deed, assignment, or patent, the interest of the United States in the Project, in consideration of payment to the Secretary—

(A) by the Districts, of an amount not to exceed \$3,000,000, determined in accordance with the Bureau of Reclamation document entitled “Framework for Title Transfer” and the

1 memorandum of agreement between the Com-  
2 missioner and the Districts under section 5;  
3 and

4 (B) by the Western Area Power Adminis-  
5 tration, of \$2,000,000.

6 (2) TIMING.—The conveyance under paragraph  
7 (1) shall be made concurrently with the making of  
8 the payment under paragraph (1)(A), but the pay-  
9 ment under paragraph (1)(B) shall be made from  
10 capacity and energy charges at Pick-Sloan Missouri  
11 Basin Program firm power rates received in fiscal  
12 year 1999 or any subsequent fiscal year in which the  
13 amount of power sale revenue received exceeds the  
14 amount of interest and operation and maintenance  
15 obligations of the Western Area Power Administra-  
16 tion by at least \$2,000,000, to the extent of the ex-  
17 cess.

18 (3) SATISFACTION OF OBLIGATIONS AGAINST  
19 THE PROJECT.—The payment under paragraph  
20 (1)(A) shall constitute full and complete satisfaction  
21 of all obligations against the Project, the Districts,  
22 and the Western Area Power Administration existing  
23 before the date of the conveyance or thereafter relat-  
24 ing to the Project, including—

1 (A) future obligations for additional drain-  
 2 age under section 5(a)(2)(iv);

3 (B) obligations under any contracts en-  
 4 tered into between the United States, the Dis-  
 5 tricts, and the Western Area Power Administra-  
 6 tion or its predecessors; and

7 (C) any obligation that may have been re-  
 8 quired by the Act of December 22, 1944 (58  
 9 Stat. 887, chapter 665) or other related Fed-  
 10 eral law.

11 (4) SATISFACTION OF OBLIGATIONS FOR IRRI-  
 12 GATION BENEFITS.—The conveyance of the Project  
 13 and the payment of the consideration under para-  
 14 graph (1) shall constitute full satisfaction of any and  
 15 all obligations of the Districts or of the Pick-Sloan  
 16 Missouri Basin Program firm power users or the  
 17 Western Area Power Administration for irrigation  
 18 benefits of the Project or for any other benefits con-  
 19 veyed to the Districts.

20 (b) CONTAMINATED PROPERTY.—

21 (1) REMEDIAL ACTION.—The Secretary shall  
 22 convey the Project without regard to whether all  
 23 necessary remedial action required under section  
 24 120(h)(3) of the Comprehensive Environmental Re-  
 25 sponse, Compensation, and Liability Act of 1980 (42

1 U.S.C. 9620(h)(3)) on any part of the Project has  
2 been completed.

3 (2) CONTINUING OBLIGATION TO COMPLETE  
4 REMEDIAL ACTION.—Notwithstanding any law to the  
5 contrary, the United States shall remain during and  
6 subsequent to the conveyance obligated, at the ex-  
7 pense of the United States, to complete any required  
8 remedial action.

9 (c) EXTINGUISHMENT OF OBLIGATIONS BETWEEN  
10 THE COMMISSIONER AND THE DISTRICTS.—Effective on  
11 the date of the conveyance, all obligations between the  
12 Commissioner and the Districts relating to the Project  
13 and the Repayment and Water Service Contracts are ex-  
14 tinguished.

15 (d) PAYMENT OF NEPA STUDY COSTS.—The Com-  
16 missioner and the Districts shall each pay 50 percent of  
17 the costs associated with compliance with the National  
18 Environmental Policy Act (42 U.S.C. 4321 et seq.).

19 (e) CREDITING OF CERTAIN ITEMS TOWARD PAY-  
20 MENT UNDER SUBSECTION (a)(1)(A).—There shall be  
21 credited toward the payment under subsection (a)(1)(A)—

22 (1) the amount of any payment made by the  
23 Districts before the date of the conveyance for com-  
24 pliance with the National Environmental Policy Act

1 (42 U.S.C. 4321 et seq.) in excess of 50 percent of  
2 the cost of compliance;

3 (2) the amount of any payments made by the  
4 Districts under contracts with the Commissioner be-  
5 tween January 1, 1999, and the date of the convey-  
6 ance;

7 (3) the present value of future operation and  
8 maintenance costs required for historic preservation  
9 on Project land at Sherman Reservoir; and

10 (4) any other amount specified in the memo-  
11 randum of agreement between the Commissioner  
12 and the Districts under section 5.

13 (f) ADDITIONAL DRAINAGE.—

14 (1) IN GENERAL.—Of the \$2,000,000 paid by  
15 the Western Area Power Administration under sub-  
16 section (a), \$500,000—

17 (A) shall be deposited in the fund referred  
18 to in section 5(a)(3); and

19 (B) shall be available for additional drain-  
20 age projects.

21 (2) NONREIMBURSABILITY.—The amount de-  
22 posited under paragraph (1) shall be nonreimburs-  
23 able and nonreturnable.

1           (3) AUTHORIZATION OF APPROPRIATIONS.—

2           There is authorized to be appropriated not more  
3           than \$500,000 for the additional drainage projects.

4 **SEC. 4. LIABILITY.**

5           Effective on the date of conveyance of the Project,  
6 the United States shall not be liable for claims, costs,  
7 damages, or judgments of any kind arising out of any act,  
8 omission, or occurrence related to the Project except for  
9 such claims, costs, or damages arising from acts of neg-  
10 ligence committed by the United States or by employees,  
11 agents, or contractors of the United States before the date  
12 of conveyance for which the United States is liable under  
13 chapter 171 of title 28, United States Code (commonly  
14 known as the “Federal Tort Claims Act”).

15 **SEC. 5. COMPLETION OF CONVEYANCE.**

16           (a) IN GENERAL.—The Secretary shall not make the  
17 conveyance under section 3 until the following events have  
18 been completed:

19           (1) Compliance with the National Environ-  
20 mental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

21           (2) Execution of—

22                   (A) memoranda of agreement between the  
23 Commissioner and the Districts describing the  
24 purchase price and other terms and conditions  
25 of the conveyance consistent with this Act; and



1 (B) an agreement by the Districts to man-  
2 age the Project in a manner substantially simi-  
3 lar to the manner in which the Project was  
4 managed before the conveyance and in accord-  
5 ance with applicable Federal and State laws,  
6 including—

7 (i) preserving on a permanent basis  
8 the right of the State of Nebraska Games  
9 and Parks Commission to develop, provide,  
10 and protect the public interest in Project  
11 fish, wildlife, and recreation facilities re-  
12 lated to the Projects;

13 (ii) providing for protection of cultural  
14 resources at the Project after the convey-  
15 ance consistent with applicable law that  
16 authorizes the Districts or others with re-  
17 sponsibility to protect significant historic  
18 features in situ or otherwise;

19 (iii) providing that the Districts shall  
20 annually make payments to local govern-  
21 ments in the amounts in which the Com-  
22 missioner made payment to the local gov-  
23 ernments under chapter 69 of title 31,  
24 United states Code (commonly known as

“payments in lieu of taxes”) for fiscal year  
1999;

(iv) providing for—

(I) a plan for additional drainage  
work in the Middle Loup Valley as  
specified in the memoranda of agree-  
ment under paragraph (1); and

(II) the funding of the additional  
drainage work;

(v) providing for the establishment by  
the Districts of an organization to be  
known as the “Nebraska-Middle Loup  
River Community Environmental Trust”  
and to be organized under State law to  
preserve, protect, enhance, and manage the  
Project by—

(I) stabilizing surface and ground  
water supplies;

(II) conserving water and land  
resources;

(III) carrying out essential drain-  
age projects using funds deposited  
under section 3(f); and

(IV) expanding knowledge of  
water and land resources for enhance-

1 ing Project operations and improving  
2 the service of Project purposes; and  
3 (vi) providing for the establishment by  
4 the Nebraska Game and Parks Commis-  
5 sion of an organization to be known as the  
6 “Nebraska-Middle Loup River Game and  
7 Parks Trust” and to be organized under  
8 State law to—

9 (I) improve and enhance fisheries  
10 and recreational opportunities; and  
11 (II) expand knowledge of water  
12 and land resources for enhancing  
13 Project operations and improving the  
14 service of Project purposes.

15 (3) DEPOSITS IN THE DISTRICT TRUST.—On  
16 receipt of the payments under section 3(a)(1), the  
17 Secretary shall deposit in the District trust—

18 (A) \$2,000,000 of the amount received  
19 under section 3(a)(1); and

20 (B) the entire amount received under sec-  
21 tion 3(a)(2).

22 (4) NO TAX; NO EFFECT ON RATES.—No pay-  
23 ment under this Act—

24 (A) shall be subject to Federal or State in-  
25 come tax; or

1 (B) shall affect Pick-Sloan Missouri Basin  
 2 Program firm power rates in any way.

3 (5) USE OF FUNDS.—

4 (A) FUNDS DEPOSITED UNDER SECTION  
 5 3(F).—The Trusts shall by their charters pro-  
 6 hibit the use of any funds deposited under sec-  
 7 tion 3(f) for routine operation and maintenance  
 8 work by the Districts, the Game and Parks  
 9 Commission, or any of the participating agen-  
 10 cies of the Trusts.

11 (B) OTHER FUNDS.—Funds received by a  
 12 Trust from a District or any other source may  
 13 be used for any purpose.

14 (6) ASSISTANCE FOR DRAINAGE WORK.—The  
 15 Game and Parks Commission Trust shall provide for  
 16 direct priority assistance to the Districts for drain-  
 17 age work in the Middle Loup River Valley under  
 18 conditions requiring greater trust fund investments  
 19 than are available from the Trust.

20 (b) REPORT.—If the conveyance under section 3 is  
 21 not substantially completed on or before December 31,  
 22 2000, the Secretary and the Districts shall promptly sub-  
 23 mit to the Committee on Resources of the House of Rep-  
 24 resentatives and the Committee on Energy and Natural  
 25 Resources of the Senate a report on the status of the con-

1 conveyance describing the matters remaining to be resolved  
2 before completion of the conveyance and stating the antici-  
3 pated date for the completion of the conveyance.

4 (c) FUTURE BENEFITS.—

5 (1) IN GENERAL.—Effective on the date of the  
6 conveyance under section 3, the Districts shall not  
7 be entitled to receive any further benefits under rec-  
8 lamation law not otherwise available attributable to  
9 its status as a reclamation project under the Act of  
10 June 17, 1902 (32 Stat. 388, chapter 1093), and  
11 Acts supplemental to and amendatory of that Act  
12 (43 U.S.C. 371 et seq.).

13 (2) NO FLOOD CONTROL COMPONENT.—After  
14 the date of the conveyance under subsection 3, the  
15 Project shall no longer have a flood control compo-  
16 nent.

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